

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 135 of 2016**

Abhisek Sonkar S/o Shri Santu Lal Sonkar, Aged About 32 Years R/o Sonkar Plaza, Gole Bazar, Shivaji Ward, Mungeli, Revenue Distt. Mungeli (Chhattisgarh)

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue, New Mantralaya, Mahanadi Bhawan, Raipur (Chhattisgarh)
2. Collector (Land Record Branch) Mungeli, Distt. Mungeli (Chhattisgarh)
3. Additional Collector, Mungeli Distt. Mungeli (Chhattisgarh)
4. Deputy Collector Cum President, Patwari Selection Committee, Mungeli, P.S. Mungeli, Distt. Mungeli (Chhattisgarh)
5. Chief Executive Officer, Zila Panchayat Mungeli, Member Of The Patwari Selection Committee, Mungeli, Civil And Revenue Distt. Mungeli (Chhattisgarh)
6. District Employment Officer, Member Of Patwari Selection Committee, Mungeli, District Mungeli (Chhattisgarh)
7. District Education Officer, Member Patwari Selection Committee, Mungeli, Distt. Mungeli (Chhattisgarh)
8. Superintendent (Land Record), Mungeli, Secretary, Patwari Selection Committee, Mungeli, Distt. Mungeli (Chhattisgarh)

-----**Respondents**

For Appellant:

Shri NL. Soni, Advocate.

For Respondents/State:

Shri RK. Gupta, Deputy Advocate General.

Hon'ble The Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Order on Board****Per Navin Sinha, Chief Justice****27/04/2016**

1. The present appeal arises from order dated 12.2.2016 dismissing Writ Petition (S) No.212/2016 as not maintainable in view of the earlier dismissal of Writ Petition (S) No.5276/2014 filed by the same Appellant on 8.12.2014.

2. Learned Counsel for the Appellant submitted that necessary certificate from the MATS University could not be annexed in the earlier Writ Petition by inadvertence though it had been submitted before the authorities at the time of application to be considered for employment. The Appellant therefore preferred the second Writ Petition by only bringing the certificate on record. On the earlier occasion, there had been no adjudication on merits as notice had also not been issued and neither counter affidavit filed. The principles of res judicata will therefore not apply.

3. Learned Counsel for the State opposing the appeal submitted that order dated 8.12.2014 in Writ Petition (S) No.5276/2014 is reasoned holding that the Appellant did not possess qualification as prescribed in the advertisement to appear at the selection. The Writ Petition was thus dismissed on merits. If the Court found no merit in the claim, the question of calling for a counter affidavit does not arise. The principles of res judicata will apply and the Appellant, if aggrieved, should have challenged the order dated 8.12.2014.

4. We have considered the submissions on behalf of the parties.

5. Writ Petition (S) No.5276/2014 was preferred by the Appellant against rejection of his candidature for appointment on the post of Patwari. The Learned Single Judge held that the Appellant did not possess post graduation diploma in Computer Application from a recognized institution. The certificate produced by the Appellant had not been issued by an University or deemed University or Open University but by a society which could not be considered valid for the purposes of the appointment. The Writ Petition was then dismissed on merits inter alia holding that the selection criteria could not be challenged after having participated in selection process also. The Appellant

did not challenge the order and it attained finality.

6. We find no reason to interfere with the reasoning of the Learned Single Judge that the Second Writ Petition was barred on the principles of constructive res judicata. A litigant coming to Court is required to annex all documents on which he seeks to rely in support of its claim. No person can be vexed twice for the same cause of action, even if the adversarial litigant happens to be the State. Writ Petition (S) No.5276/2014 was dismissed on merits. The order attained finality. It is not necessary for a Writ Court to compulsively call for a counter affidavit even when it finds no merit in the claim prima facie on basis of the pleadings made out in the Writ Petition.

7. We therefore find no merit in this appeal.

8. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE